

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OBJECTION TO MAY 2, 2022 IOWA CODE § 476.10A ASSESSMENT	DOCKET NO. SPU-2022-0003
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**ORDER DENYING STAY AND CORRECTING DEADLINE FOR PAYMENT**

**PROCEDURAL HISTORY**

This proceeding arises from the issuance of invoices by the Utilities Board (Board) pursuant to Iowa Code § 476.10A(1)(a). On June 2, 2022, MidAmerican Energy Company; Interstate Power and Light Company; Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy; the Iowa Association of Municipal Utilities; and the Iowa Association of Electric Cooperatives (collectively, Objectors) filed with the Board an objection to the May 2, 2022 Assessment in Docket No. M-0001.

Pursuant to 199 Iowa Administrative Code (IAC) rule 17.10, the objection was docketed in the above-captioned proceeding, briefs were filed, and an oral argument was held before the Board on June 23, 2022. On July 29, 2022, the Board issued an Order Denying Objection to Invoice and directed all Iowa gas and electric utilities that had not yet paid a 2022 invoice issued to it pursuant to Iowa Code § 476.10A to make payment.

On August 8, 2022, the Objectors filed a Motion for Stay of the Board's July 29, 2022 order.

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### **OBJECTORS ARGUMENT IN SUPPORT OF STAY**

The Objectors assert that they are likely to prevail on the merits in the Petition for Judicial Review proceeding filed on August 12, 2022, in Polk County District Court and, in support thereof, reference the arguments previously asserted in this docket and again assert that the Board made a substantial deviation from past practice in regard to the implementation of Iowa Code § 476.10A. In addition to the assertion of a likelihood to prevail on the merits, the Objectors' statement in support of the Motion for Stay consists of the following:

“Although the Utilities presume the Board and State of Iowa could refund any amounts paid, negating any claim of irreparable injury or substantial harm, see Iowa Code § 17A.19(5)(c)(2)-(3), it would be simpler and ease the potential administrative accounting burdens of the State and the Utilities to stay the Board's order, preserving the status quo during the pendency of the judicial review. The public interest favors staying the matter pending the full resolution of the dispute. See Iowa Code § 17A.19(5)(c)(4). The tax imposed by the Board will ultimately be borne by customers, and those customers deserve a full presentation of the dispute prior to footing the bill.”

### **BOARD DISCUSSION**

Upon the filing of a Petition for Judicial Review, the Board may grant a stay on appropriate terms or impose other temporary remedies unless precluded by law. See *Iowa Code 17A.19(5)(a)*. The first question to be addressed therefore is whether the granting of a stay by the Board is precluded by law.

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The Board's July 29, 2022 order is based solely on the Board's statutory obligations pursuant to Iowa Code § 476.10A. The first duty arises pursuant to Iowa Code § 476.10A(1)(a), which provides:

1. a. The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

The second duty arises pursuant to Iowa Code § 476.10A(1)(c), which provides:

- c. (1) Of eighty-five percent of the remittances collected pursuant to this section, the following shall occur:
  - (a) For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.
  - (b) For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.
  - (c) For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.
  - (d) For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

To date, the Board has taken necessary and appropriate actions to fulfill its duty under Iowa Code § 476.10A(1)(a). Invoices were issued by the Board directing all gas and electric utilities to remit the required payments. Upon receipt of an objection, the objection procedures set forth in 199 IAC 17.10 were implemented and a timely order was issued denying the objection and directing that Iowa electric and gas utilities remit funds as statutorily required.

The Board's duties pursuant to Iowa Code § 476.10A(1)(c) are applicable to "remittances collected" and the timing thereof is not set forth in statute except to the

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extent that state of Iowa fiscal procedures may impact the ability to appropriate funds to a prior fiscal year. The Board is an executive branch agency which complies with, rather than establishes, such fiscal procedures.

The question therefore presented is whether the issuance of a stay of the July 29, 2022 order is precluded by the plain language of Iowa Code § 476.10A(1)(a). Because the statute provides, “**The board shall direct** all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations” (emphasis added), the Board is prohibited from issuing the requested stay. The granting of a stay, regardless of the length of time, would constitute a direction to all gas and electric utilities that they need not remit the statutorily assessed funds. Iowa Code § 476.10A does not provide the Board with the discretion to allow non-payment.

Because the Board finds that it lacks the authority to issue a stay in the proceeding, further analysis of such factors as the likelihood that the Objectors would prevail on the merits, the extent to which the Objectors would suffer irreparable harm, and the extent to which the grant of relief would substantially harm other parties, need not be determined. However, the Board finds that the state of Iowa, the Iowa Energy Center, and the Center for Global and Regional Environmental Research will be substantially harmed by the failure to receive funds assessed to the Objectors by the Iowa Legislature and appropriated to these entities by law. The issuance of a stay would not require the Board to defer or forgo the receipt of any funds applicable to the Board’s budget or finances. The funding involved is solely appropriated to the entities listed above.

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### **CORRECTION OF DEADLINE FOR PAYMENT**

The Objectors have correctly stated that subrule 199 IAC 17.10(7) establishes that, in the event the Board affirms an assessment after objection, payment of the amount disputed shall be due 30 days from the date of the order. The Board issued the Order Denying Objection to Invoice on July 29, 2022, making the deadline for payment established by rule Monday, August 29, 2022.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The Motion for Stay filed by MidAmerican Energy Company; Interstate Power and Light Company; Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy; the Iowa Association of Municipal Utilities; and the Iowa Association of Electric Cooperatives on August 8, 2022, is denied.
2. All gas and electric utilities that have not yet paid a 2022 invoice issued to such utility pursuant to Iowa Code § 476.10A shall remit payment by August 29, 2022.

### **UTILITIES BOARD**

**Geri Huser** Date: 2022.08.26  
16:08:05 -05'00'

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**Richard Lozier** Date: 2022.08.25  
15:12:42 -05'00'

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ATTEST:

**Kerrilyn Russ** Date: 2022.08.26  
16:12:45 -05'00'

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Dated at Des Moines, Iowa, this 26th day of August, 2022.

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### **DISSENTING OPINION**

I dissent from the Utilities Board's July 29, 2022 Order Denying Objection to Invoice and would have granted the June 2, 2022 Objection filed by MidAmerican Energy Company; Interstate Power and Light Company; Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy; the Iowa Association of Municipal Utilities; and the Iowa Association of Electric Cooperatives.

I likewise dissent from the majority's denial of the August 8, 2022 Motion to Stay and would have granted the same.

**Josh Byrnes** Date: 2022.08.26  
10:23:25 -05'00'

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ATTEST:

**Kerrilyn Russ** Date: 2022.08.26  
16:13:27 -05'00'

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Dated at Des Moines, Iowa, this 26th day of August, 2022.